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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 LUCIANO DELGADO,

12 Petitioner,

13 v.

14 RON RACKLEY,

15 Respondent.
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NO. CV 14-3221-JLS (AGR)

ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other
19 records on file herein, and the Report and Recommendation of the United States
20 Magistrate Judge. Further, the Court has engaged in a *de novo* review of those
21 portions of the Report and Recommendation to which objections have been
22 made. The Court accepts the findings and recommendation of the Magistrate
23 Judge except as stated below.

24 Petitioner pled guilty to one count of second degree murder and one count
25 of attempted murder on January 6, 1992. (Petition at 2-3.) Petitioner was
26 apparently identified as a Little Hill gang member. (Exh. G at 30-31 to Petition.)
27 Prior to the guilty plea, Sergeant Edmundson testified at the preliminary hearing
28 that the gun in Petitioner's case was subsequently retrieved during execution of a

1 search warrant at the home of Mr. Navarro, another Little Hill gang member.
2 (Exh. L at 15 to Petition.) Petitioner attaches a report indicating that an expended
3 bullet in case number 091-11447-1442-011 could have been fired from the Glock
4 found at Mr. Navarro's home. (Exh. F at 56 to Petition.) Petitioner filed a motion
5 for an evidentiary hearing to determine whether the case number 091-11447-
6 1442-011 is the same as his case, 091-11447-1442-051. (Dkt. No. 36.)

7 Petitioner's motion for an evidentiary hearing is DENIED. It was
8 undisputed at the preliminary hearing that the gun in Petitioner's case was
9 subsequently found in Mr. Navarro's home. Exhibit H to the Petition indicates
10 that the file number to Petitioner's case was changed to 091-11447-1442-011
11 after the victim died and his case was to be handled by homicide detectives.
12 (Exh. H at 2 to Petition.)

13 Petitioner's evidence falls far short of the showing required to establish
14 actual innocence and overcome the statute of limitations. Petitioner must
15 persuade the court that "in light of the new evidence, no juror, acting reasonably,
16 would have voted to find him guilty beyond a reasonable doubt." *McQuiggin v.*
17 *Perkins*, 133 S. Ct. 1924, 1928 (2013) (citation omitted). Petitioner has not met
18 that standard.

19 The remaining objections are without merit.

20 IT THEREFORE IS ORDERED that judgment be entered denying the
21 Petition and dismissing this action with prejudice.

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23 DATED: February 29, 2016



JOSEPHINE L. STATON
United States District Judge